

Commentary

Comment on “The static evolution of the new Italian code of medical ethics”

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Dear Editor,

The manuscript by Montanari Vergallo et al¹ appears primarily important because it resubmits the discussion on the relationship between law and ethical norm in medical practice, as being responsible for promoting professional conduct or slowing it down and depriving it of its meaning.

The flattening of ethical norms at a legal level implies a loss of interest in the code of medical ethics, and leads to a certain skepticism in consideration to its practical role: the law has a true regulatory role while ethics has only a hortatory role, which is not very effective in practice.

As stated by the authors, this is evident in Italy, where the code of medical ethics has a specific extra-legal identity, and its precepts cannot be considered as a primary source of law.

Therefore, although ethical principles are inevitably affected by the legal order of rules, and are reflected in the interpretation and application of the law itself, the code of ethics, however, remains distinct from the ethical law, being devoid of that resonance and enforcement which formally characterize State Law.

In this sense it is difficult to accept that judgment or legislative activities can be affected by a professional category norm considering its privatistic nature².

In Italy, the real problem is that Law is not able to regulate all ethical questions, even those extremely relevant. This problem cannot justify the use of a code of medical ethics for matters through which the Law must provide the strongest possible guarantees for pluralism.

However, it is important to continue to support the role of a code of medical ethics as a moderation tool of horizontal (with colleagues) and vertical relationships (with patients and society), as “an instrument of guarantee for the doctor and for society”³. This is a role where both the actions and the omissions acknowledge its source, beyond the ordinary law, the negotiated agreement, the Constitution and the standard of professional conduct itself⁴.

Although in Italy ethical standards have a wide margin of discretion, the situation is different in France, where the “*code de déontologie médicale*” is a legislative act adopted by the head of government (Décret 95-1000 du 6 Septembre 1995). This code of medical ethics deeply involves doctors in its formulation and on this issue the legislator wishes to ensure respect for life and human dignity, in the absence of prejudicial abuses to people and society, and at the same time to ensure the doctor’s personal responsibility and freedom of decision. In this country, the code of ethics has a true legal value although of course limited to doctors. The lack of respect of ethical precepts can hold the doctor pursuable before ordinary courts⁵.

In the US, AMA’s Code of Medical Ethics⁶ is instead a body of prescriptions without effective legal implications which tend to keep separate the sphere of law from ethics even if in a strongly procedural environment. These principles adopted by the American Medical Association are not laws, but standards of conduct. These concepts are reinforced in opinion 1.02 where the prevalent role of ethical principles is underlined. The result is that statements are intended to clarify the relationship between law and ethics. Ethical values and legal principles are usually closely related, but ethical obligations typically exceed legal duties.

This background suggests two points of development, probably needed to boost the real debate between medical ethics and civil society:

1. Achieve a homogeneous European position regarding the relationship law/code of ethics, in line with the work done by European Council of Medical Orders (ECMO) which in 2010 updates the Principles of European Medical Ethics, in 2011 adopts the European Charter of Medical Ethics, and in 2013 issues its first deontological Guidelines.
2. Overcome the legal “contractualism” with a rehabilitation of the connection between the biological and legal dimensions, by addressing quality issues that increasingly affect healthcare management becoming effective and shared evaluation indicators.

Conflict of Interest

The Authors declare that there are no conflicts of interest.

References

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